

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3929 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

IBRAHIM GULAM MALEK

Versus

STATE OF GUJARAT

Appearance:

MR.H.R.PRAJAPATI FOR M/S THAKKAR ASSOC., Advocates
for the petitioner.

MR.U.R.BHATT, learned Assistant Government Pleader
for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/07/96

ORAL JUDGEMENT

District Magistrate, Surat, in exercise of the powers vested in him under sub-section (1) of section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 has detained Ibrahim Gulam Malek by the order of detention dated 6-3-96 . It is this order of detention

which is challenged by the petitioner-detenu by way of this petition under Article 226 of the Constitution of India.

In the grounds of detention, supplied to the detenu, the detaining authority has placed reliance on two criminal cases of the year 1994 and one criminal case of the year 1996 registered with the Mangrol Police Station. The detaining authority has also relied on the statements of four witnesses recorded on 21-2-1996 making allegations against the detenu about his anti-social and naferious activities. Considering this material, the detaining authority was of the view that the detenu is a "dangerous person" within the meaning of section 2 (c) of the said Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Mr. Prajapati, appearing for the petitioner, has submitted that it is a clear case of non-application of mind on the part of the detaining authority in passing the impugned order of detention inasmuch as even though the detenu was arrested with respect to the offence registered against him at C.R.No. 11/96 and was granted bail , the said material was not placed before the detaining authority by the sponsoering authority and consequently, therefore, the copies of the bail application and the bail order were not supplied to the detenu with the result that the detenu could not make an effective representation against his detention and, therefore, the impugned order of detention is liable to be quashed and set aside.

The contention raised by Mr. Prajapati appears to be well founded. In the grounds of detention supplied to the detenu, it is stated by the detaining authority that the detenu is absconding since 7-2-96 the day on which the offences punishable under sections 325, 506 (2) and 114 of the Indian Penal Code and section 25 (1) (c) of the Arms Act were registered against him vide C.R.No.11/96 before the Mangrol Police Station. The detenu was arrested on 25-2-96 and was released on bail with respect to the said C.R.No.11/96 on 26-2-96 by the learned JMFC, Mangrol which is evident from the certified copy of the bail order produced by Mr. Prajapati. The proposal to detain the detenu was sent by the concerned officer of the Mangrol Police Station on 27-2-96. Therefore, the concerned police officer was expected to

know about the bail granted to the detenu on the previous day i.e. 26-2-96. Surprisingly the same was not placed before the detaining authority. Hence this vital document escaped the consideration of the detaining authority and , on the contrary, a finding is recorded that the detenu was absconding since 7-2-96. In view of this, there is no manner of doubt that the impugned order came to be passed with clear non-application of mind and without considering the vital document of the bail order. Since a copy of the said document was not supplied to the detenu, he is denied his valuable right of making an effective representation against his detention guaranteed under Article 22 (5) of the Constitution of India and, therefore, the continued detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 6-3-96 is quashed and set aside. The detenu Ibrahim Gulam Malek is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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